

REMARKS

This Amendment serves as the submission accompanying Applicants' Request for Continued Examination (RCE) filed pursuant to 37 C.F.R. §1.114. By final Office Action mailed December 27, 2005, pending claims 1 and 33-34 stand rejected, reconsideration of which is respectfully requested in view of the above amendments and following remarks. Claims 1 and 33-34 have been amended. Claims 1 and 33-34 are now pending.

Rejection Under 35 U.S.C. §112, Second Paragraph

Claims 1 and 33-34 are rejected under 35 U.S.C. §112, second paragraph, due to the recitation of a sample fluid and a second fluid, rather than a first fluid and a second fluid. For purposes of clarity, Applicants have amended claims 1 and 33-34 to recite a "*first* sample fluid" (emphasis added). Support for these amendments may be found, for example, in the Abstract and paragraph [0009] of the specification, which refer to the sample fluid as the first fluid. Applicants submit that no new matter has been added by way of these amendments. In view of these amendments, Applicants submit that the pending claims satisfy the second paragraph requirements of §112 and request that this ground of rejection be withdrawn.

Rejections Under 35 U.S.C. §102(e)

Claims 1 and 33-34 remain rejected under 35 U.S.C. §102(e) as being anticipated by either Vigh et al. (U.S. Patent No. 6,511,850) or Weigl et al. (U.S. Patent No. 6,454,945). Applicants strongly object to the maintenance of these rejections. In the Examiner's response to Applicants' prior arguments (set forth on pages 2-3 of the Office Action), the Examiner not only failed to address each of Applicants' arguments, but failed to point to the relevant portions of Vigh and Weigl that allegedly disclose each and every element of the pending claims.

More specifically, as discussed in Applicants' prior Amendment, the claimed invention is directed to a method of controlling the flow rate of a fluid sample flowing through a microfluidic channel comprising three steps: (1) selecting a second fluid having a known viscosity; (2) sheathing the fluid sample within a center region of the second fluid flowing through the microfluidic channel; and (3) flowing the fluid sample and the second fluid through

the microfluidic channel in laminar flow. In addition, the claimed method (*i.e.*, the foregoing three steps) has the following four characteristics: (1) the second fluid completely surrounds, and is in contact with, the fluid sample at an interface between the second fluid and the fluid sample; (2) the flow rate of the fluid sample is constant across the center region; (3) the flow rate of the fluid sample is substantially equal to the flow rate of the second fluid at the interface between the second fluid and the fluid sample; and (4) the second fluid is selected for achieving a desired flow rate at the interface between the fluid sample and the second fluid. Applicants submit that the Examiner has failed to point to the relevant portions of Vigh and Weigl that disclose a method comprising each, and every one, of the foregoing three steps having each, and every one, of the foregoing four characteristics.

Although the Examiner alleges that Vigh and Weigl each disclose a method comprising steps (2) and (3), and having characteristics (1) and (3),¹ the Examiner has failed to show where either Vigh or Weigl discloses a method comprising step (1) and characteristics (2) and (4). Applicants respectfully request that the Examiner point to the specific portion of the references relied upon pursuant to 37 CFR 1.104(c)(2) in this regard (“When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable”). To this end, Applicants respectfully request that the Examiner issue a further non-final Office Action if necessary.

Further, not only do the cited references fail to teach all of the claimed elements, there is no suggestion or motivation within these references to modify the disclosure therewithin to arrive at the claim subject matter.


In view of the above amendment and remarks, allowance of claims 1, 33 and 34 is respectfully requested. Alternatively, should the Examiner maintain any of the outstanding

¹ Applicants do not acquiesce to these allegations and maintain that neither Vigh nor Weigl disclose a method having characteristic (3). If necessary, Applicants will more specifically address this allegation in a further response.

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rejections, Applicants request that he specifically identify the relevant portions of the references relied upon in order to give Applicants an opportunity for responding more fully.

Respectfully submitted,
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